

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ALASKA

RONALD E. ZUBER,

Plaintiff,

vs.

APC NATCHIQ, INC.,

Defendant.

Case No. A03-0052 CV (RRB)

DEPOSITION OF MARK C. NELSON

APPEARANCES:

For the Plaintiff: Kenneth L. Covell, Esq.  
712 Eighth Avenue  
Fairbanks, Alaska 99701

For the Defendant: Gregoryk L. Youngmun, Esq.  
DeLisio, Moran, Geraghty & Zobel  
943 West Sixth Avenue, Suite 110  
Anchorage, Alaska 99501

Also Present: Ronald E. Zuber

\* \* \* \* \*

Pursuant to Notice, the Deposition of MARK C. NELSON was taken on behalf of the Plaintiff before Teresa E. Mielke, Notary Public in and for the State of Alaska and Reporter for Gemini Reporting Services, at the Offices of Gemini Reporting Services, 943 West Sixth Avenue, Suite 110, Anchorage, Alaska, on the 26th day of August, 2003, commencing at the hour of 1:50 p.m.

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**GEMINI**

Reporting Services  
943 West 6th, Suite 110  
Anchorage, Alaska 99501  
277-8591



PROCEEDINGS

(Oath administered)

MARK C. NELSON.

4 having first been duly sworn under Oath, testified as follows:

5 REPORTER: And for the record would you please state your  
6 full name?

7 A Mark C. Nelson.

8 REPORTER: Standard spelling?

9 A N-E-L-S-O-N.

10 REPORTER: What is your mailing address?

11 A 3900 "C" Street, Suite 701, Anchorage, 995 -- here we go,  
12 let's see. -03

13 REPORTER: And your occupation?

14 A President of AES, operations and maintenance.

15 BY MR. COVELL:

16 Q Good afternoon, Mr. Nelson.

17 A Hi.

18 Q AES is -- why don't you tell me what AES stands for?

19 A Arctic Slope Regional Corporation Energy Services.

20 Q Okay, and is that the successor to APC?

21 A Yes.

22 Q All right. Were you president of APC....

23 A Yes.

24 Q .....prior to the, I guess, reorganization, if that's the  
25 right way to call it? When did you become president of

1 somewhat are interchangeable.

2 Q Okay. I was under the impression or recollection from  
3 talking to him at one point there was both the business  
4 unit manager and an operations manager for Kuparuk even if  
5 the business unit manager might've had more than Kuparuk,  
6 it might've had another field as well?7 A For a period of time. What he might be referring to is  
8 there was a Anchorage-based asset manager, business unit  
9 manager, whatever you might want to call it, a position  
10 that was held for, I don't know, maybe one to two years.  
11 The person that filled the role in Anchorage was  
12 reimbursed by the client, but was -- the position was  
13 eliminated.14 Q So the general scheme is to have an operations manager at  
15 Kuparuk that's in charge of APC operations for Kuparuk?

16 A Correct, reports to the president.

17 Q Okay, all right. And so the hierarchy would be president,  
18 operations manager, and the business unit manager, if  
19 existed, might be between the president and the....

20 A Doesn't....

21 Q .....operations manager?

22 A Doesn't exist.

23 Q Okay, all right. And what's your training and experience  
24 and education?

25 A Education, high school, a bachelor of science in finance

1 APC?

2 A Two -- year 2000.

3 Q Prior to that time what was your position?

4 A Operations manager -- prior to president I was vice  
5 president for four or five months, prior to that I was  
6 operations manager of the Kuparuk field.7 Q Okay, and what time frame were you operations manager of  
8 Kuparuk field? Was it....

9 A It....

10 Q Would it be from '96 on through....

11 A Yes.

12 Q .....2001? We talked to Mr. Buchanan a little bit  
13 yesterday and I got some information, so just try to keep  
14 things moving here. As operations manager were you in  
15 charge of the Kuparuk field for APC operations?

16 A Yes.

17 Q And was there a business unit manager during your tenure  
18 as Kuparuk operations manager?19 A Business unit -- define that position? You mean in the  
20 organization....21 Q My understanding from talking to Mr. Buchanan is his  
22 current job is business unit manager, is that right?

23 A Yes.

24 Q Okay, and he's....

25 A Or operations manager, sure. I think those titles

1 and accounting. Education beyond that, currently enrolled  
2 in a project management master's program. Education --  
3 additional education through a tremendous amount of  
4 seminars, training, on-the-job training, that type of  
5 thing.6 Q Okay, and what's your work experience, you know, after  
7 high school, the significant work experience that led you  
8 to this position that you're in now?9 A After college I came to Alaska, went to work for a  
10 predecessor of APC, Pioneer Oilfield Services, and the  
11 company was ultimately purchased by Natchiq, which was the  
12 parent company, and I rolled right into it, so spent 17  
13 years on the North Slope.14 Q And besides being president of APC and operations manager  
15 at Kuparuk what other positions have you held with Pioneer  
16 and Natchiq?17 A I was the administrative manager prior to operations  
18 manager.

19 Q Okay, and what does that mean?

20 A Administrative manager is the person who is over all the  
21 accounting, field-related or, non-operational functions.22 Q Okay, so accounting and human relations and other non-  
23 operational duties, is that fair?

24 A Right.

25 Q Okay. And when did you go from administrative manager to



1 operations?

2 A The year '93, '94, when the oilfield slowed down, they --

3 we made a decision to eliminate my alternate's position

4 and the operations manager's position, and so that person

5 and I alternated for a period of time, I don't know what

6 period of time, really, some short period, and then -- and

7 then the positions were combined. We really tried to move

8 more of the administrative functions to town and leave one

9 operations manager on the Slope.

10 Q All right. As operations manager at Kuparuk -- Mr.

11 Buchanan told us he had roughly in the range of 600 people

12 working for him when -- or, has, I guess, as the

13 operations manager. Is that about the number of people

14 you would have working under you as operations manager

15 during your tenure there?

16 A Yes.

17 Q All right, and among those positions did you employ safety

18 specialists?

19 A Yes.

20 Q All right, and was Mr. Zuber a safety specialist for APC

21 from about 1996 'til about January of 2001?

22 A Yes.

23 Q And you knew him up there as an employee, is that right?

24 A Sure.

25 Q Okay. What does a safety specialist do?

1 operations manager, is that what you told us?

2 A Okay, I guess where I'm trying to understand what your

3 question is the year and the job. As we define '96

4 through 2000 and when I was in Kuparuk there was a safety

5 specialist. The safety specialist was one of my direct

6 reports on my staff, and then that -- so if we're

7 referring to Ron in this case, Ron was not one of my

8 direct reports.

9 Q Okay, and who was your direct report, if you recollect?

10 A For which position?

11 Q For safety specialists. If I understood what you're

12 saying was some safety specialist did report directly to

13 you. I guess I'm anticipating perhaps that those might be

14 the safety supervisors, but I don't know, I'm -- so I'm

15 asking you.

16 A The majority of the time while I was in Kuparuk where Ron

17 was there also, Bob Cannon and Ron Kirk was the

18 supervisor. Not sure of time frames, maybe Michael Day

19 was in there also.

20 Q Okay, and were they -- when they reported directly to you

21 were they classified or was their job title safety

22 supervisor?

23 A My direct report? Safety supervisor, yes.

24 Q Okay, so is it -- not that Mr. Zuber couldn't report

25 directly to you, but as a normal course of affairs would

1 A That's a broad question.

2 Q Okay, I'll take a broad answer.

3 A Safety specialist is -- is -- if you wanted to boil it

4 into a nutshell, is the eyes and ears of management in the

5 field. Safety is a huge piece of our business today, has

6 been for a number of years, and the specialist is the

7 person out in the -- in the work force, in the field,

8 involved with our day to day operations who -- where a

9 person, myself, the operations manager, couldn't be --

10 couldn't be -- there's not enough eyes and ears on my

11 body, so we employ safety specialists to be more eyes and

12 ears, if you will, out in the -- out in the operations.

13 Q And then would a safety specialist report directly to you?

14 A Could, and have in the past, or in the case of Kuparuk

15 reported to me through a supervisor.

16 Q Okay, and I guess that question contemplates you being the

17 operations manager when I ask -- or, that's a -- is that

18 how you answered the question when I said report to you?

19 You took it to mean as operations manager as opposed to

20 your current position of president?

21 A Will you repeat the question?

22 Q Safety specialist -- safety specialist won't report to you

23 as president of APC or AES, would they?

24 A Not day to day, no.

25 Q And a safety specialist would sometimes report to you as

1 be report to the safety supervisor, who then would report

2 to you?

3 A Yes.

4 Q In the organization of the safety department, I understand

5 there's safety specialists, safety supervisor, and then I

6 understand that there's a -- there is or was a further

7 higher position in the department. Do you have a person

8 like that or a position like that now?

9 A Describe that position.

10 Q Somebody that the -- somebody that's in charge of the

11 safety department.

12 A Beyond the supervisor?

13 Q Right.

14 A No.

15 Q Okay, did you -- or, have you had over the course of '96

16 to present somebody in a position like that?

17 A In the department that had -- that the -- between the line

18 of management between myself at the time and the

19 supervisor?

20 Q Well, between the position, say, of -- either between the

21 position of president, or whatever the chief officer was,

22 and a safety supervisor was there an intermediary

23 individual or position that was in charge of the safety

24 department, in charge of the safety supervisors?

25 A Okay, I -- your mix-up might be on time periods. Are you



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Page 12

1 talking about today as president or are you talking about  
 2 when I was operations manager in Kuparuk?  
 3 Q For the time frame '96 forward, regardless of what your  
 4 job was, were there -- was there a person or a position  
 5 that the safety supervisors reported to, and that person  
 6 or job was the overall head of the safety department?  
 7 A For APC, no.  
 8 Q Okay, was it -- do you remember a Mr. Heffler or Heffley  
 9 or Heffer -- Heffner having a job like that?  
 10 A Keith Heffner, yes.  
 11 Q And did he have a job like that?  
 12 A Keith Heffner was -- I'm not sure what period of time he  
 13 was employed with the company, but I believe always with  
 14 the parent company Natchiq.  
 15 Q Okay, and what was his title, or is or was his title, if  
 16 you know?  
 17 A Somewhat -- something along the line of a corporate --  
 18 corporate HSE manager.  
 19 Q Okay, Mr. Buchanan called him the corporate safety guy, I  
 20 think, is that....  
 21 A Okay.  
 22 Q ....reasonable....  
 23 A Sure.  
 24 Q ....name for him? All right, and prior to become AES was  
 25 Mr. Heffler -- Heffler, is that the right name? Heff,....

1 always a position, whether it be at Natchiq or APC, that  
 2 was comparable to Mr. Smith's and Mr. Heffner's job?  
 3 A With some gaps, maybe. I can't recall. Yeah.  
 4 Q Generally that would be the....  
 5 A Company philosophy would have a corporate safety officer  
 6 or corporate safety man on the -- yes.  
 7 Q Okay, all right. Would it be reasonable to call that  
 8 position a corporate safety director or a safety director?  
 9 A I'm sure -- I don't know the distinction, director versus  
 10 manager versus officer but....  
 11 Q I'm not trying to....  
 12 A ....senior -- senior safety resource to management, yes.  
 13 Q Okay, all right.  
 14 MR. COVELL: That's too early, isn't it?  
 15 MR. YOUNGMUN: It's 2:10.  
 16 MR. COVELL: Yes, it's too early.  
 17 Q Do you have -- or, when you were APC did you have a legal  
 18 department?  
 19 A What year?  
 20 Q 1996 forward.  
 21 A The -- I did not have access to a legal department in '96.  
 22 The legal in-house counsel we currently have today was  
 23 hired, I'm going to say, '99, 2000.  
 24 Q Okay, if -- prior to that time if you had need for legal  
 25 resource would the company obtain them for you?

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Page 13

1 A You're going to get me saying this now. Heffner.  
 2 Q Mr. Heffner in that same position as corporate safety guy?  
 3 A At the -- in which time frame?  
 4 Q Well, recently you changed from APC Natchiq to AES,  
 5 right....  
 6 A Okay.  
 7 Q ....within a year or so?  
 8 A Today Keith Heffner is -- wait. Keith, yeah, today is not  
 9 our corporate safety man with AES. Today our corporate  
 10 safety man, 2003, is Doug Smith. So help me from there,  
 11 I'm not sure I under....  
 12 Q All right, well, the -- we can go to either spot with  
 13 this. So Doug Smith is the corporate safety man. Today  
 14 do the specialists report to a safety supervisor and then  
 15 do the safety supervisors report to -- not exclusively but  
 16 to Mr. Smith?  
 17 A Do they have a channel of communication, a line of  
 18 reporting to the corporate safety man?  
 19 Q Yes.  
 20 A Sure.  
 21 Q Okay, and they might -- the safety supervisors might as  
 22 well -- might also report to operations manager at  
 23 Kuparuk, right?  
 24 A Yes.  
 25 Q All right. From the time frame in 1996 forward was there

1 A We would've made a decision as to need and -- sure, of  
 2 course, right.  
 3 Q Okay. In 1996 you had occasion to -- or, did you have  
 4 occasion to evaluate various positions with APC for their  
 5 categorization as exempt or nonexempt for purposes of  
 6 overtime under state and federal law?  
 7 A I started '96, I think the time frame '97 is when I really  
 8 -- was really more -- did more of an evaluation.  
 9 Q Okay, and what precipitated you to do that, if you recall?  
 10 A Concerns that I had just in the -- in the media and  
 11 whatnot regarding exempt versus nonexempt.  
 12 Q Let me show you Exhibits 1 and 2 here, I represent to you  
 13 Exhibit 1 is what was supplied to us in discovery as a job  
 14 description for safety specialist, and Exhibit 2 is a job  
 15 announcement for a safety specialist job. Are you  
 16 familiar with Exhibit 1 there?  
 17 A Want me to read it, or....  
 18 Q No, I'm just asking if that's....  
 19 A I recognize the general outline, yes.  
 20 Q Okay. All right, do you recollect using that back in '96  
 21 or '97 in connection with evaluating whether or not a  
 22 safety specialist position was exempt or nonexempt?  
 23 A This particular job description?  
 24 Q Or one similar to it. This one -- we looked at these  
 25 earlier today, and we have potentially three of them.



1 There's Exhibit 1, there's this job advertisement, I  
 2 guess, and then there was....  
 3 MR. YOUNGMUN: 145.  
 4 Q And this is -- I'm showing you Exhibit 4 that's designated  
 5 APC 145. We came to the -- or, we came to the possible  
 6 conclusion that this APC 145 is an older version of this  
 7 Exhibit 1, and that they're apparently similar but there's  
 8 some minor differences in them. And it's just to  
 9 hopefully save us some time. In doing a review of the  
 10 exempt status as a safety specialist did you use a job  
 11 description -- this job description or one like it in  
 12 doing a review, to your recollection?  
 13 A It could have been a partial review that I did at the time  
 14 by using this material.  
 15 Q All right, can you take a minute, and we'll go off record  
 16 if you need to, and read these and see if in your opinion  
 17 these fairly describe the position of safety specialist  
 18 with APC from 1996 to date?  
 19 A Okay, you're -- you're asking me are these basically the  
 20 same position evolving over the last....  
 21 Q Sure.  
 22 A ....X years or something?  
 23 Q Yes, yes.  
 24 A Well, you want -- if you want me to read them verbatim I  
 25 can. I can probably look at....

1 Q Yes.  
 2 A Okay.  
 3 Q Okay, is that article, which I understand to be a Forbes  
 4 magazine article, what precipitated your interest in  
 5 reviewing exempt versus nonexempt positions?  
 6 A I think so, primarily.  
 7 Q Looking at the second page of that in the next to last  
 8 paragraph, about four lines down they talk about a case,  
 9 Auer, A-U-E-R v. Robbins, do you see that right down in  
 10 here?  
 11 A Yes, um-hm.  
 12 Q Okay, did you read that case?  
 13 A No.  
 14 Q Are you familiar with that case at all?  
 15 A No.  
 16 Q All right, and did you set some -- something in motion to  
 17 track the progress of that case?  
 18 A No.  
 19 Q Looking at the next page, which is 139, this seems to be -  
 20 - does this have much to do with the classification of  
 21 exempt/nonexempt?  
 22 A Doesn't appear to.  
 23 MR. COVELL: Okay, do you want these, Greg? That's the  
 24 other copy there, sure.  
 25 Q Okay, let's go to the next page here. This is 140, this

1 Q No, I....  
 2 A ....them structurally and say they're probably the  
 3 evaluation of -- you know, this was probably an old one,  
 4 that's dated something last year, and this is probably  
 5 this year. So, yeah, I would say it's probably an  
 6 evaluation of time over -- without reading it verbatim.  
 7 Q From '96 to date have there been any dramatic changes in  
 8 the duties of the safety specialist?  
 9 A In the day to day duties?  
 10 Q Yes.  
 11 A No.  
 12 Q All right. Why don't you take a look at what's -- that's  
 13 Exhibit 4, right? No, that's your copy, I have a copy  
 14 right here. I just kind of -- In the course of evaluating  
 15 the position was there some paperwork generated? When you  
 16 examined the position of safety specialist and other  
 17 positions concerning their exempt or nonexempt status was  
 18 there some paperwork generated in that regard?  
 19 A Yes.  
 20 Q Okay, and -- okay. In Exhibit 4 I have these papers that  
 21 were produced by your company to me, and I'd like to go  
 22 through them with you and discuss them, so if you could  
 23 turn to Page 137, which is the first page following the  
 24 legal pleadings there.  
 25 A This article?

1 appears to be a memo from you to Anne Hippe and Toby  
 2 Osborn, do you -- I guess is that what it is?  
 3 A Yes.  
 4 Q Do you recollect generating this....  
 5 A Yes.  
 6 Q ....today?  
 7 A It looks like one of mine.  
 8 Q All right, and who's Anne Hippe and Toby Osborn?  
 9 A Anne Hippe at the time was the comptroller, Toby Osborn  
 10 was the CFO.  
 11 Q Okay, and CFO is chief financial officer?  
 12 A Yes.  
 13 Q Okay, so these are money people, is that....  
 14 A Money people, yes.  
 15 Q Okay, all right. And does that essentially say you're  
 16 concerned about people being exempt or nonexempt and you  
 17 wanted to look into that matter and explore it?  
 18 A Right, at that time I was concerned and looking for -- I  
 19 don't think I had much exposure at the time to exempt  
 20 versus nonexempt and were looking for how do you classify.  
 21 were we correct, were we not correct, looking for answers.  
 22 Q Okay, and also in conjunction with looking at the exempt,  
 23 nonexempt, did you also have a concern about whether or  
 24 not paying people a daily salary was something you ought  
 25 or ought not to be doing?



Page 18

Page 20

1 A Is that what my memo says?

2 Q Yes, I'd suggest to you that in these further papers.....

3 A Suggest it? Sure, if that's what I was suggesting.

4 Q Okay, all right. We already discussed -- let's go through

5 these. 145 appearing to be the job description that more

6 or less describes the job of safety specialist.

7 A Oh, so, okay, project superintendent on 141.....

8 Q Right.

9 A ....and engineers, super -- materials supervisors, 145,

10 yes, safety specialists.

11 Q Okay, and those pages you just went through before are

12 other job descriptions for the company, is that right?

13 A Yes.

14 Q Did you review not only the safety specialists but those

15 other job descriptions back in this time frame, '96, '97?

16 A Yes.

17 Q Okay, turning to 147, is that your handwriting?

18 A Yes, it is.

19 Q Okay, much better than mine, believe me. What's this

20 paper represent, or what's it all about, if you can tell

21 us?

22 A I don't know all of what was going through my -- what was

23 going through my mind at this time. There were -- there's

24 a distinction in Alaska law between exempt/nonexempt,

25 three categories. The ones that I would be concerned

1 Q Did you want to call them a cheat sheet?

2 A Yeah, I don't -- whatever you....

3 Q A checklist for....

4 A ....for a layman, to --

5 Q ....more formal....

6 A Sure.

7 Q ....sounding?

8 A More or less, yeah.

9 Q All right, do you know where these -- the blanks came

10 from, as far as these checklists go?

11 A Don't know today, yeah.

12 Q All right, do you know if maybe you got them from -- well,

13 never mind, okay. All right, do you know what 158 and 159

14 are and why they might be included here as being relevant

15 to this case?

16 A 158?

17 Q And 159.

18 A One fifty -- They -- they are printouts, I'm not sure out

19 of what system, if it was the data base we used at the

20 time on the Slope. Appear to be employees who were paid

21 on a day rate.

22 Q Okay, do you know what was under the black-outs on those

23 pages?

24 A No.

25 Q Do you know why the black-outs are there?

Page 19

Page 21

1 with, administrative, professional, executive. I believe

2 it was -- in fact, I'm almost -- can almost remember the

3 conversation with Randy Carr was around supervisors. I

4 was unaware at the time supervisors was a whole separate

5 classification and how it was classed in state law, but it

6 was something that should be set aside and we -- something

7 we should be concerned about, that you could classify them

8 as exempt. But it's really exempt, they should be paid

9 for all hours worked, but they could be paid at the

10 straight time rate, and it was something I had never heard

11 before. It was a note I made. This is some of those

12 chicken scratches that I was making, maybe at the time I

13 was even talking to him, for all I know. These are --

14 these are -- these people listed below are maybe notes in

15 my mind at the time of people that were paid exempt, could

16 -- that could be -- maybe they were improperly -- I didn't

17 know at the time, I was making notes to check them out. I

18 suspect that's what it was.

19 Q All right, and then turning to Pages -- well, as a group,

20 148 through 157.

21 A Okay.

22 Q Can you tell us what those are, in general?

23 A Yeah, they're some kind of a -- a test that you walk

24 through and check whether they meet the criteria of exempt

25 or nonexempt, basically.

1 A I don't recall. They may have been non -- nonexempt, I

2 don't know.

3 Q All right, and then Page 160, do you know why this is

4 here? Might that be additional day rate people?

5 A Additional people, right.

6 Q All right. Looking at Page 161, that looks like that's

7 perhaps an e-mail from you to Harvill/Price, and I believe

8 we were told they were some type of managers, perhaps.

9 Well, who are Harvill/Price?

10 A Well, let me familiarize myself with this for a second

11 here.

12 Q Any time you want to do that, just say so, I don't mean to

13 rush you.

14 A Well, I can walk you through. Harvill and Price were

15 super -- they were ARCO supervisors at the time, it was

16 John Harvill, Mike Price, just used the last names. Bill

17 Hurley at the time was -- was ARCO's HR manager in

18 Anchorage. He may have been on the Slope periodically,

19 but he was their HR manager. This would've been sent

20 from, looks like Mike Price to Bill Hurley, the initial e-

21 mail, asking the question -- well, it says, he writes,

22 Mark Nelson is reviewing the APC positions, "he was

23 curious as to how ARCO determined this. They would like

24 to use our input as benchmarking information on" the

25 issue. I -- I probably went to him at the time and said,



Page 22

1 hey, how do you guys do it. You know, this is in December  
2 of '96, it was early on, I was -- I had concerns. I went  
3 to these guys and said what's the -- in fact, I think the  
4 article, the Forbes article, referenced a case against  
5 ARCO. I probably assumed at the time ARCO had -- was very  
6 fluent in this subject and could help me.  
7 Q Okay. I believe it does reference an article.  
8 A They in turn referred me to their compensation specialist  
9 or analyst here, Nancy Williams, gave me her number.  
10 Q Okay, did you ever talk to Nancy Williams?  
11 A Talked to somebody, don't recall the name.  
12 Q Concerning classification of positions as exempt or  
13 nonexempt?  
14 A Yes.  
15 Q Okay, do you recollect anything from the conversation?  
16 A Is that -- do you have a fax they sent me? It was in the  
17 file when I turned it over. Is that coming up here?  
18 Q I -- look at the next page.  
19 A Bingo. Okay, yes, I spoke with Nancy Williams, there is  
20 it. She -- I spoke with her about -- actually I was  
21 trying to get information about the case, she was not very  
22 forthcoming about the case, and she said something to the  
23 effect of we use a -- I don't know, I'll share with you  
24 some information, and she shared, I think, that fax right  
25 there it, basically.

Page 23

1 Q All right, and that's got a cover sheet, it says cover  
2 plus eight, so let's just count, one, two, three, four,  
3 five, six, seven, eight takes you through what's labeled  
4 APC....  
5 A Yeah.  
6 Q ....170. So is it your recollection that those  
7 subsequent eight pages were the fax that you....  
8 A Yeah.  
9 Q ....received from -- Okay, all right. So you had this  
10 conversation, she wasn't forthcoming about the case, but  
11 she said I'll share these materials with you and she sent  
12 those subsequent eight pages. Did the conversation --  
13 what else do you recollect about the conversation, if  
14 anything, or is that....  
15 A She said they'd made changes in some of their positions,  
16 some of them they hadn't -- I don't really recall at the  
17 time. I -- I should say I recall at the time they were --  
18 there was an issue around engineers, field engineers, I  
19 don't remember how they ended up classifying -- I think  
20 that's what their suit -- the original suit was brought  
21 against. I may have asked, I think I did, about the  
22 supervisory people, how they were classifying maybe the --  
23 The positions I was concerned about at the time were  
24 warehouseman, safety specialist, engineers and whatnot,  
25 and I think that she told me. I'm going to say

Page 24

1 recollection is that she told me that they still  
2 classified safety as exempt, that they had maybe made  
3 changes in their engineering, but they weren't at liberty  
4 really to disclose too much information around that.  
5 Q Okay, is it fair to say, and correct me if I'm wrong  
6 because I'm not trying to testify here, that the  
7 conversation with her was somewhat guarded as to what they  
8 did or what they were doing?  
9 A Yes.  
10 Q Okay, and she said well, here is -- not to put this  
11 rudely, but she sort of said here is some materials, try  
12 to work it out with these?  
13 A Yeah, she -- and you're dating me, this is six or seven  
14 years ago, so I don't remember the verbatim conversation.  
15 It was something that, you know, we had the suit, we're  
16 not -- we don't want to talk about it. I think it had  
17 been settled out of court, I don't know that it was made  
18 public. She said, I'll -- you know, I could tell you some  
19 here -- but I don't think at the time it helped me, it's  
20 not -- I wasn't going to rely solely on her -- her  
21 opinions or what she told me to make a final judgment. So  
22 I -- it was just -- that was just early in the game.  
23 Q Step in the process?  
24 A Yes.  
25 Q Okay, all right. Let's go ahead and turn over to Page 171

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1 because it might be answering some of our questions.  
2 There appears to be an e-mail there from you to Chris  
3 Boyle, indicates you talked with Nancy Williams, she faxed  
4 you a guideline, refer you to Rose Garcia or LouAnn in  
5 their payroll. Do you remember talking to Rose or LouAnn  
6 in payroll?  
7 A Well, I -- I said here it was LouAnn I talked with, so I  
8 -- I must've. You know, I don't -- I don't really recall  
9 the conversation, though.  
10 Q Okay. Was it....  
11 A If I read this -- if you want me to read this, it would --  
12 looks like one of my e-mails, so I can read it if you like  
13 and....  
14 Q No, we've got it in the record I'm just as much trying to  
15 jog your memory as we have this -- we have this  
16 information essentially -- well, you're establishing it  
17 for us as your e-mail that was made contemporaneous with  
18 you going through this classification procedure. All  
19 right, and that second half of that first paragraph starts  
20 to address the day rate issue, as you can see. Does that  
21 refresh your recollection that that was a matter that was  
22 of concern to you, along with the exemption status?  
23 A Yes. Or partial. I think at the time my concern was as  
24 much partial payment of a day rate.  
25 Q Okay. Let's see here. What -- well, let's just put this